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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/620,459	07/20/2000	Gary Scott Stevens	10731.20USC1	3803
23552	7590	05/07/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			ELISCA, PIERRE E	
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/620,459

Applicant(s)

STEVENS, GARY SCOTT

Examiner

Pierre E. Elisca

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 11-17 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to Applicant's amendment, filed on 01/16/2004.
2. Claims 1-5, and 7-17 are pending.

ALLOWABLE SUBJECT MATTER

3. Claims 10-17 are allowed over the prior art of record.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, and 7-9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Schieve et al. (U.S. Pat. No. 5,455,933) in view of Cheffetz et al. (U.S. Pat. No. 5,133,065).

As per claims 1, 4, and 7-9 Schieve substantially discloses a method/system for remote diagnosis of personal computers (which is readable as Applicant's claimed invention wherein it is stated that a computer program pre-recorded on a removable

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storage medium, the removable storage device of a local computer), the system comprising the steps of:

a remote data recovery operating program locally operable by a central processing unit of the local computer (see., abstract, col 3, lines 1-15, lines 43-49, col 4, lines 60-67); communication program means for establishing communication (see., abstract, col 3, lines 49-63, col 5, lines 1-21). Schieve fails to disclose a method for remotely recovery data from the computer.

However, Cheffetz discloses a computer network for backing up computer data and program files onto backup media for subsequent restoring (or rectifying) in the event the files are inadvertently corrupted or destroyed (see., abstract, col 1, lines 7-14). Though it is common in the art that fault recovery system (or fail-safe system) is a system designed to continue operating without loss of or damage to programs and data, when part of the system breaks down or seriously malfunction. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the remote diagnosis of personal computer of Schieve et al by including a backup computer as taught by Cheffetz et al because such modification would provide the remote diagnosis of personal computer of Schieve et al with a backup media for subsequent restoring in the event files are corrupted, destroyed or deleted, the newest copies of such files may be restored from the incremental or baselines backups (see., col 1, lines 7-54). Applicant's newly added limitation for diagnosis and rectifying data on the local computer is also disclosed by Schieve et al. in col 3, lines 44-63, specifically wherein it is stated that remotely diagnosis faults on a PC comprising the steps of

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confirming or rectifying an existence and a proper operation of a modem coupled to the PC...

As per claim 2, Schieve discloses the claimed limitation, wherein the remote data recovery operating program comprises a data recovery diagnostic program (see., abstract).

As per claim 3, Schieve discloses the claimed limitation, wherein the remote data recovery operating program comprises a data recovery application program (see., col 6, lines 57-63, abstract, please note that booting computer or application program).

As per claim 4, Schieve substantially discloses substantially discloses a method/system for remote diagnosis of personal computers (which is readable as Applicant's claimed invention wherein it is stated that a computer program pre-recorded on a removable storage medium, the removable storage device of a local computer), the system comprising the steps of:

Establishing a communications link between a local computer having a data storage device requiring recovery of data and a remote data recovery computer (see., abstract, col 3, lines 1-15, lines 43-49, col 4, lines 60-67); communication program means for establishing communication; maintaining access to data recovery programs resident at the remote data recovery computer; and diagnosing the data storage (see., abstract, col 3, lines 49-63, col 5, lines 1-21). Schieve fails to disclose a method for remotely recovery data from the computer.

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However, Cheffetz discloses a computer network for backing up computer data and program files onto backup media for subsequent restoring (or rectifying) in the event the files are inadvertently corrupted or destroyed (see., abstract, col 1, lines 7-14). Though it is common in the art that fault recovery system (or fail-safe system) is a system designed to continue operating without loss of or damage to programs and data, when part of the system breaks down or seriously malfunction. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the remote diagnosis of personal computer of Schieve et al by including a backup computer as taught by Cheffetz et al because such modification would provide the remote diagnosis of personal computer of Schieve et al with a backup media for subsequent restoring in the event files are corrupted, destroyed or deleted, the newest copies of such files may be restored from the incremental or baselines backups (see., col 1, lines 7-54). Applicant's newly added limitation for diagnosis and rectifying data on the local computer is also disclosed by Schieve et al. in col 3, lines 44-63, specifically wherein it is stated that remotely diagnosis faults on a PC comprising the steps of confirming or rectifying an existence and a proper operation of a modem coupled to the PC...

As per claim 5, Schieve discloses the claimed limitation, wherein the step of establishing a communications link comprises establishing a communications link over one of the group consisting of a modem, a local area network, a wide area network and Internet (see., col 6, lines 21-37, please note that it is obvious to realize that the serial

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link that comprises a telephone line to a remote location can also be an Internet or a local area network).

RESPONSE TO ARGUMENTS

6. Applicant's arguments filed on 1/16/2004 have been fully considered but they are not persuasive.

REMARKS

7. During the Interview conducted on 11/20/2003 Applicant's argues that:

a. the Examiner has failed to address the limitation in claim 4. However, the rejection of claim 4 is provided see above.

b. " a computer program pre-recorded on a removable storage medium". Based upon foregoing rejection indicated above, it is believed that Schieve discloses this limitation in the abstract, col 3, lines 25-63, col 5, lines 1-21, specifically wherein said providing for remote diagnosis in PCs and the like that requires a minimal amount of fully functioning hardware and software to operate so that even non-bootable faults can be remotely diagnosed. Please note that the software or computer program is located in the personal computer's hard drive or storage medium.

c. rectifying data". As noted above, Cheffetz discloses a computer network for backing up computer data and program files onto backup media for subsequent **restoring (or rectifying)** in the event the files are inadvertently corrupted or destroyed (see., abstract, col 1, lines 7-14). Though it is common in the art that fault recovery system (or fail-safe

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system) is a system designed to continue operating without loss of or damage to programs and data, when part of the system breaks down or seriously malfunction. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the remote diagnosis of personal computer of Schieve et al by including a backup computer as taught by Cheffetz et al because such modification would provide the remote diagnosis of personal computer of Schieve et al with a backup media for subsequent restoring in the event files are corrupted, destroyed or deleted, the newest copies of such files may be restored from the incremental or baselines backups (see., col 1, lines 7-54).

Conclusion

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 703 305-3987. The examiner can normally be reached on 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703 305-9769. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Pierre Eddy Elisca

Primary Patent Examiner

May 05, 2004